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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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July 23, 1996

Via Courier

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

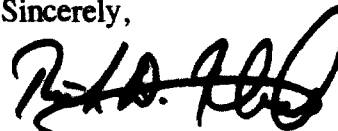
Re: PR Docket No. 93-144
Notice of Ex Parte Contact

Dear Mr. Caton:

In accordance with the Commission's rules, this will provide notice that a meeting was held and a presentation made concerning the above-captioned proceeding with Ms. Rosalind Allen, Esq., Mr. David Furth, Esq., Ms. D'wana Speight, Esq., and Mr. David Kirschner, Esq. of the Commission's Wireless Telecommunications Bureau on July 18, 1996. A copy of the presentation summary is attached for the Commission's files. Attending the meeting were Mr. David A. Fulmer, P.E. of Duke Power Company as well as the undersigned.

This presentation was made on behalf of Duke Power Company. The points raised during the discussion with the Wireless Bureau senior staff members substantially reflect positions taken in commentary filed on behalf of Duke Power at earlier stages of this docket proceeding. It is believed that this correspondence is complete and in proper order for its intended purpose; however, should questions arise concerning this matter please call me at the direct contact number shown above.

Sincerely,



Rick D. Rhodes

Enclosure

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**Duke Power Company
Concerns with 800 MHz Transition Proceeding**

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Duke Power Company operates a 60 channel private internal telecommunications system on 800 MHz spectrum. Thirty of these 60 channels are in the "upper two hundred" channels scheduled for auctioning to wide area commercial systems. Duke's system is a purely internal private system which promotes the safety and efficiency of electric power provision throughout Duke's 29,000 square mile service territory in North and South Carolina. Duke's system is of critical importance to the public well being and thus, Duke cannot tolerate interruptions of its telecommunications capabilities.

Duke has carefully reviewed the FCC databases and licensing records of 800 MHz licensees in its service area to determine the potential universe of available replacement frequencies. Replacement spectrum is in short supply in the Duke operational area. Thus, unlike transition activity in the 2 GHz proceeding which was made easier by the provision of clean replacement spectrum at 6 GHz, the 800 MHz transition will be extremely difficult and in many cases impossible since adequate replacement spectrum will not be available. Duke's concerns are particularly heightened because of the spectrum - efficient characteristics of the Duke telecommunications system. In an effort to conserve spectrum resources, Duke has designed its system to extensively employ spectrum reuse whereby channels integrated for operation in Duke's system operate in various zones throughout Duke's service territory. Accordingly, a channel which apparently would be acceptable for replacement purposes in the Winston Salem zone could be unworkable in the Charlotte zone due to the channel's being unacceptable for integration into the Duke system within the reuse plan.

Based on the foregoing, Duke has very specific concerns which must be addressed in the Commission's final 800 MHz policy. In order to be considered "equivalent", replacement spectrum must offer fully comparable operating characteristics, including being capable of integration on a system-wide basis. Replacement spectrum must operate to the sole satisfaction of Duke since an inability to operate adequate telecommunications facilities during an emergency would negatively impact the public welfare and safety.

Any provisions by which relocation from a channel now in the Duke system could be mandated by the Commission, must specify that mandatory moves may occur only when Duke is satisfied that the new spectrum is fully operable as replacement spectrum on a system-wide basis. Otherwise, Duke must not be forced into any spectrum replacement activity. The FCC must adopt a policy whereby any allegations of bad faith refusal to negotiate coming from new EA licensees must be accompanied by documented evidence of a failure by an incumbent to negotiate. The Commission must not allow such allegations to be based simply upon a failure to accept a given channel as replacement spectrum, since technical transition issues could render honest spectrum suitability disagreements an easy target for allegations of bad faith tactics.

In order to smooth transition proceedings, it is imperative that all new EA licensees whose operation could affect Duke's wide-area system must consolidate transition efforts and coordinate migration planning on a uniform basis. This is critical since it is possible that Duke could face "piecemeal" system relocation efforts by as many as 21 EA licensees. Duke does not have the

resources to accommodate complicated separate multi-party negotiations and consolidation is the only answer by which negotiations may proceed.

Where replacement spectrum is accepted by Duke there must be no second migration. Duke, as a private licensee, must be given the same assurances as the Commission tentatively has granted to commercial licensees who are migrated to the "lower 80" or to other 800 MHz channels.

In order to accommodate complex system migrations, and to allow for maximum flexibility between the parties, Duke asks that the Commission establish a "two year voluntary one-year mandatory" negotiation timetable, since the 800 MHz negotiations will prove much more difficult from a technological perspective than the 2 GHz transition, and ample time must be granted to the parties to reach reasonable migration arrangements. Additionally all costs of migration must be covered by the new EA licensee regardless of whether final arrangements are reached during the mandatory or voluntary negotiation periods. Such cost must include at a minimum, all internal company costs associated with the shifting of personnel to special negotiation and transition project teams as well as outside engineering, legal and other consulting services, equipment purchases, and/or modification costs, licensing fees, and all other fees reasonably attributable to the transition process. Following actual testing of the replacement facilities if the new frequency is unsatisfactory, Duke must have the right to revert to its former frequency and to continue operating on that frequency until such time as an adequate replacement channel may be made available by the EA licensee.

Additionally, where any EA licensee attempts to move an incumbent from a frequency and where that new frequency ultimately proves unsatisfactory forcing the incumbent to revert to its original frequency assignment, the EA licensee must bear all costs incurred by the incumbent in association with the spectrum migration attempt. This policy would ensure fundamental fairness to incumbents in all transition activities, including those which ultimately prove unsuccessful. Moreover, this approach will help deter questionable spectrum migration proposals and ensure that migration demands are made only where a reasonable possibility of success is demonstrated by a thorough engineering review.